

1 | schedule in St. Louis, Your Honor. I worked very hard to do
2 | that.

3 | JUDGE STEINBERG: Well, I, I appreciate your
4 | attempts to give us a busy schedule in St. Louis. Let the
5 | record reflect everybody smiling, except Mr. -- and Mr. Honig.

6 | MR. HONIG: A little.

7 | JUDGE STEINBERG: A little, okay. So you'll try to
8 | get something to the church by close of business tomorrow?

9 | MR. HONIG: I, I can't promise because it depends on
10 | Mr. Miller and his lawyer, but I'll do my best.

11 | JUDGE STEINBERG: Okay. Let them try to come up.
12 | If you can't, try to come up with a date and the time when you
13 | can do that.

14 | MR. HONIG: Yes. That I'm sure I can do.

15 | JUDGE STEINBERG: Okay. And, and, and I want it in
16 | as much detail as possible. And if you can persuade him to
17 | give you a declaration or an affidavit, do it.

18 | MR. HONIG: Do you want the statement to be a
19 | statement that I'm submitting that says that, that he has been
20 | endorsed, almost as though it's his testimony, or do you want
21 | it to be, I mean do you want it to be subject matters like an
22 | outline or, or affirmative statements that can be
23 | cross-examined?

24 | JUDGE STEINBERG: As, as detailed as possible of
25 | factual, he's going to testify A, B, C, D, E, with respect to

1 | how a radio station persuades its advertisers to buy time and
2 | the relative importance of specialized knowledge of a format.
3 | He's going to say blah, blah, blah, blah, blah. Make is as
4 | much, as much a declaration as you can, but, of course, it
5 | doesn't have a signature on it. Because they're entitled to
6 | have the details if, to the extent that you know it. Now we
7 | all recognize that if you put him up on the stand and he says
8 | different things or additional things, there's nothing anybody
9 | can do about that, but the Church will have an opportunity, if
10 | they want to, to prepare to cross-examine. If we have to have
11 | his direct examination and then wait for a period of time,
12 | even a considerable period of time before cross-examination to
13 | allow them to cross, and, and the Bureau, I keep forgetting
14 | the Bureau, then we'll do that.

15 | MR. ZAUNER: Are we talking about two trips then to
16 | St. Louis?

17 | JUDGE STEINBERG: No, no. We're not talking about
18 | two trips to St. Louis.

19 | MR. HONIG: Yes. And I would agree with Your Honor
20 | that, that where there is no opportunity to, to see the direct
21 | first, more latitude ought to be given on cross.

22 | JUDGE STEINBERG: Exactly. And, and also I think
23 | you ought, you ought to have a, a statement as to his
24 | background qualifications so that they can look into that.

25 | MS. SCHMELTZER: Your Honor?

1 JUDGE STEINBERG: In addition to the, because he's,
2 he's being presented as an expert with -- because he's of
3 expertise in the St. Louis market, and I think the Church is
4 entitled to check him out.

5 MR. HONIG: Sure.

6 MS. SCHMELTZER: In that connection, any other
7 statement or any other material that, and any other notes that
8 Mr. Blanton did that Mr. Honig has in his possession with
9 respect to Jan Hutchinson, Otis Woodard, and Richard Miller,
10 we would request them to turn over immediately.

11 MR. HONIG: Absolutely not without a motion to
12 compel, Your Honor. Those are attorney/client documents, an
13 attorney work product, and, and I, I must vigorously oppose
14 any such request --

15 MS. SCHMELTZER: Mr. Blanton --

16 MR. HONIG: -- unless it's met with the drafts of,
17 of, of all of the other witnesses that the Church has, and I
18 don't think there has been such ruling, and one would be
19 unprecedented.

20 MS. SCHMELTZER: Mr. Blanton is not an attorney, so
21 it's not attorney/client --

22 JUDGE STEINBERG: He's an agent. He's an agent of
23 Mr. Honig. It's just like you send out an investigator, you
24 send out someone else working at your firm. He's an agent of
25 Mr. Honig, so that's, that's covered.

1 MS. SCHMELTZER: Well, I don't know his
2 relationship.

3 JUDGE STEINBERG: Well, he, he told, he said on the
4 record yesterday. It seems to me that that's work product and
5 if, if you want to move to compel and I'll look at it
6 in-camera if you can get it to me, if you can get it to me
7 this evening or tomorrow morning, I'll look at it in camera,
8 and I'll determine whether it's work product. You, you're
9 talking about Mr. Honig's notes of his conversations with
10 these, with --

11 MS. SCHMELTZER: Or Mr. Blanton's notes, but also
12 other --

13 JUDGE STEINBERG: Yes.

14 MS. SCHMELTZER: -- other statements that they may
15 have provided him, other, I noticed that some of the witnesses
16 provided him with resumes and material. If there is any of
17 that material, I think we're entitled to that.

18 MR. HONIG: I don't think there is.

19 JUDGE STEINBERG: Well, do you want to move to
20 compel and then I'll, and then you get the stuff to me?

21 MR. HONIG: Can I see the, I'd like to get a written
22 motion so I can respond.

23 JUDGE STEINBERG: We don't have time to, to a
24 written motion. We, we, you know, this is, this is Tuesday,
25 tomorrow is going to be a very, very busy day because we've

1 got Mr. Stortz.

2 MR. HONIG: Well, Your Honor, then I, then I'd like
3 to consult with my client and reserve the right tomorrow
4 morning to file a written response, because you're, you're
5 being asked to, to invade attorney work product and I can't do
6 that without the client's instructions, and one of the few
7 instructions I do have, they give you a lot of latitude if
8 you're an NAACP lawyer to try a case, but the one thing that
9 they won't let you do is sit in Court and waive privileges.

10 JUDGE STEINBERG: You're not waiving it.

11 MR. HONIG: Well, but --

12 JUDGE STEINBERG: Why don't you, why don't you be
13 prepared to orally argue it. You can write it and read it.

14 MR. HONIG: Sure.

15 JUDGE STEINBERG: And have the material with you in
16 the courtroom and I'll, and, you know, during an appropriate
17 break or, or whenever, I'll look at it. We're not talking,
18 are we talking attorney/client, well, it seems to me like
19 we're talking work product, notes of interviews.

20 MR. HONIG: I'm assuming we're just talking about --

21 JUDGE STEINBERG: Why don't --

22 MR. HONIG: -- just the three, the, the --

23 MS. SCHMELTZER: Yes, just those three.

24 JUDGE STEINBERG: Jan Hutchinson, Otis Woodard,
25 Richard Miller. Mrs. Schmeltzer, state on the record what you

1 want.

2 MS. SCHMELTZER: I want any notes of interviews. I
3 want statements that any of those individuals sent to
4 Mr. Honig other than, not the ones that you've already
5 exchanged, but any other statements.

6 JUDGE STEINBERG: Drafts of statements?

7 MS. SCHMELTZER: Drafts of statements, and anything
8 else that they sent you in connection with their declaration.

9 MR. HONIG: All right. And, Your Honor, I would
10 like the same material from Ms. Schmeltzer as to her eight
11 witnesses.

12 JUDGE STEINBERG: The time for you to move to compel
13 for that material is expired.

14 MR. HONIG: I, I don't understand why --

15 JUDGE STEINBERG: Why? Because, because she didn't
16 know who these people were going to be until now. You knew
17 who the universe of her, she didn't know the universe of your
18 witnesses until, until you exchanged your direct case.

19 MR. HONIG: But she could have filed during
20 discovery --

21 MS. SCHMELTZER: I did.

22 MR. HONIG: -- for, for --

23 JUDGE STEINBERG: She did.

24 MR. HONIG: -- for the production --

25 JUDGE STEINBERG: She did and you said we, you, you

1 don't, you know of no one with personal knowledge --

2 MR. HONIG: No --

3 JUDGE STEINBERG: -- of, of facts regarding the,
4 its, the two issues.

5 MR. HONIG: I also said the request wasn't made at
6 that time when it should have been made for attorney/client
7 documents --

8 JUDGE STEINBERG: She did, and you said there were
9 none.

10 MS. SCHMELTZER: That's right.

11 JUDGE STEINBERG: She asked for, she asked for that
12 in an interrogatory, it was interrogatory two, am I right?

13 MS. SCHMELTZER: Yes.

14 JUDGE STEINBERG: Interrogatory one was, requested
15 names of people and, of course, I, didn't I rewrite
16 interrogatory one when I --

17 MS. SCHMELTZER: I, I revised it.

18 JUDGE STEINBERG: Well, someone, someone revised it.

19 MS. SCHMELTZER: Correct.

20 JUDGE STEINBERG: And because originally you had
21 asked for a list of his, names of his witnesses --

22 MS. SCHMELTZER: Yes.

23 JUDGE STEINBERG: -- which you wouldn't have gotten,
24 and then it was amended to ask for people with relevant
25 knowledge. And interrogatory two requested documents. Your

1 answer was none, we don't have any, I believe.

2 MR. HONIG: I think that's right.

3 MS. SCHMELTZER: And that there, and you said there
4 were no privileged documents.

5 JUDGE STEINBERG: Right. Because you objected
6 strenuously to providing any documents, even for in camera
7 inspection, you objected to giving me an index because that
8 would disclose your trial strategy, etc., etc. I rejected all
9 of that and said give me an index and you said we have no
10 documents. So she did ask.

11 MR. HONIG: Okay. I'll go back and look and be
12 sure, but I, but I, and I'll be in the, in the position to
13 argue that tomorrow morning. If we can take it up first in
14 the morning?

15 JUDGE STEINBERG: We'll see. No, I think, I think
16 their position is totally distinguishable from yours. You had
17 from, in essence, February 1st when the HDO was released,
18 until the closing date of discovery, to discover.

19 MR. HONIG: And the reason I didn't ask for
20 materials relating to Ms. Schmeltzer was I think there was a
21 ruling that the attorney/client privilege that I could get --

22 JUDGE STEINBERG: No, you, no, let me tell you --

23 MR. HONIG: -- Porter.

24 JUDGE STEINBERG: Was what?

25 MR. HONIG: That it just applied to Arnold and

1 Porter.

2 JUDGE STEINBERG: That's right.

3 MR. HONIG: It didn't apply to --

4 JUDGE STEINBERG: (INAUDIBLE)

5 MR. HONIG: -- so I didn't ask for any documents of

6 Ms. Schmeltzer.

7 JUDGE STEINBERG: Right.

8 MR. HONIG: We felt it inappropriate.

9 JUDGE STEINBERG: Right, you didn't, so you didn't

10 ask.

11 MR. HONIG: Right.

12 JUDGE STEINBERG: Had you asked, they would have

13 given me an index, you would have moved to compel, and I would

14 have taken a look at the stuff in camera. As a matter of

15 fact, I was expecting you to do it and I was surprised you

16 didn't.

17 MR. HONIG: I didn't do it because I thought I

18 couldn't. But I'll go back and check.

19 JUDGE STEINBERG: Well, we can't, it's too late to

20 do it now.

21 MR. HONIG: I'll, I'll go back and check.

22 MR. ZAUNER: Your Honor, I can't help but notice

23 that today is Tuesday, June 21st, and we're very rapidly

24 approaching the time which we're going to have the Fisher --

25 on, on travel to St. Louis, and it seems to me the question of

1 | travel to St. Louis seems to be turning on whether or not
2 | we're going to have to go there to take the testimony of Mr.
3 | Miller.

4 | JUDGE STEINBERG: Well, and Ms. Hutchinson and
5 | Mr. Woodard.

6 | MR. ZAUNER: But I think that the Mr. Miller one is
7 | going to be the problematic one, rather than the other two.
8 | And I'm wondering if there is any possibility, I presume that
9 | Mr. Honig has already interviewed Mr. Miller and has obtained
10 | a good deal of information from Mr. Miller, at least enough
11 | information that he is proposing Mr. Miller now as a witness
12 | based upon what he knows and what he has learned from
13 | Mr. Miller, and I, I guess my, my concern is, is there any
14 | possibility that Mr. Miller, that Mr. Honig could provide us
15 | with Mr. Miller's information perhaps as early as tomorrow
16 | morning so that we can get this out of the way.

17 | JUDGE STEINBERG: I'd like, I'd like it, I'd like it
18 | to be --

19 | MR. ZAUNER: I mean we're --

20 | JUDGE STEINBERG: I'd like it to be exchanged as
21 | soon as possible. Now if you want to, I mean, let, let me ask
22 | you, Mr. Honig, is what Mr. Zauner said correct, that you, you
23 | know, have, do you have extensive notes of your interview with
24 | him? You said you met him personally. Have, have you got a
25 | really good idea as to what he's going to say on each of these

1 three points?

2 MR. HONIG: I have a fairly good idea of what he's
3 going to say, enough so that I could expand somewhat, but it
4 would be, this is my impression of what he's going to say, and
5 all it would be is just that he might surprise me and go
6 beyond it.

7 MR. ZAUNER: But, but, Your Honor, isn't that true,
8 if he can't get a statement from the witness, so anything that
9 he's going to give us at any point is, of time, is going to be
10 his idea of what he's going to say. Not only that, but it's
11 always true that a witness on the stand maybe go beyond what
12 the proponent of that witness expects him to say.

13 MR. HONIG: On, on, on direct, that's true.

14 JUDGE STEINBERG: Because I, I would like you to get
15 something to the, to opposing counsel as soon as possible,
16 perhaps tomorrow or --

17 MR. HONIG: You said close of business, but as a
18 practical matter for me, that means the beginning of business
19 because I'll be here all day, so if, if, if I don't have it
20 tomorrow morning, it means it'll be the next morning, but I'm
21 going to try and get it by tomorrow morning.

22 JUDGE STEINBERG: I'd, I'd --

23 MR. HONIG: I just don't know if I can reach
24 Mr. Miller and his lawyer tonight.

25 JUDGE STEINBERG: Okay. If he, even if you don't

1 reach Mr. Miller, can you prepare something that you can
2 exchange, and then after you reach Mr. Miller, perhaps you can
3 amend it or change it or expand upon it.

4 MR. HONIG: The trouble is that he might then say I
5 don't want to say that or, and, and the it's out there.

6 JUDGE STEINBERG: Well, but he's already said it and
7 he said it to you.

8 MR. HONIG: Yes, but --

9 JUDGE STEINBERG: And you're going to, well --

10 MR. HONIG: -- he's an old man and he --

11 JUDGE STEINBERG: He's only 60. Sixty is not old.
12 And your, your 60 year old people, any, any 60 year old people
13 in this room would take offense at that.

14 MR. HONIG: When you, when, when you live that long,
15 you have a right to change your mind.

16 MS. SCHMELTZER: Your Honor?

17 JUDGE STEINBERG: Oh, what, well, anyway, see if you
18 can --

19 MR. HONIG: -- I'll, I'll try.

20 JUDGE STEINBERG: -- see if you can get something to
21 them by tomorrow morning.

22 MR. HONIG: I will try.

23 MR. ZAUNER: This is becoming vaguer and vaguer. I
24 mean originally we were given three areas in which this man
25 was going to testify.

1 JUDGE STEINBERG: Well, what I'm --

2 MR. ZAUNER: And now I'm hearing that he may not,
3 well, he may change his mind and not testify.

4 MR. HONIG: No, I --

5 JUDGE STEINBERG: He's talking, he's talking about
6 the specifics, I guess.

7 MR. ZAUNER: Well, this is, these --

8 MR. HONIG: No, I know he'll testify about those
9 three areas, but all of the, I mean that's A, B, and C, I just
10 don't know the 1, 2, 3 within the A, B, and C. In other
11 words, I can do a three-bullet outline, but I can't do a
12 nine-bullet outline yet.

13 JUDGE STEINBERG: Try your best.

14 MR. HONIG: I'll try my best.

15 MS. SCHMELTZER: Your Honor, if I could just make
16 one point here. One of the reasons this case has been
17 accelerated and that the Church has been eager to --

18 JUDGE STEINBERG: It's the transfer application.

19 MS. SCHMELTZER: -- proceeding, is that our transfer
20 application for KSLH is being held up because the NAACP has
21 filed a petition to deny which said that until this hearing
22 was over, that the Commission should not act on the transfer
23 application. And so we are very eager to get this case over
24 with as soon as possible and, in that light, this whole matter
25 with Mr. Miller is very distressing.

1 MR. HONIG: May I say something about that, Your
2 Honor.

3 JUDGE STEINBERG: Well, let's, that's ancillary. I
4 don't want to hear anything, anymore about that. I've heard,
5 I, Mrs. Schmeltzer noted it for the record and I've, I've
6 received the copies of your pleading, and so that I knew that
7 was going on, and I would, believe me, the case is being
8 expedited because I want it expedited, let's get it over with,
9 let's take the evidence, close the record, write a decision,
10 and appeal. And then whoever, because whoever loses is going
11 to appeal, and, and so I'm anxious to get it over with, too.
12 So I don't know, I don't know what more I can say. Let me
13 just do this, there was something hanging from this, this
14 morning. The request for production by Mr. Honig.
15 Mr. Honig's request for the production of the transcript and
16 tape of the Lauher interview. That request is denied.
17 Mr. Lauher has been excused and I don't see that any useful
18 purpose would be served by, by requiring the Church to produce
19 the transcript and, and the tape at this juncture. So
20 anything else that's been hanging?

21 MR. HONIG: There was an original of Mr. Lauher's
22 draft which had from the version that was changed, that was
23 typed up, that I think you had asked the, the Church to
24 provide me.

25 JUDGE STEINBERG: Oh, the handwritten draft?

1 MR. HONIG: The, the original draft.

2 MS. SCHMELTZER: I have not been able to find that.

3 That was done out in St. Louis and, you know, there were a lot

4 of typo's by the secretary as it was being typed. I have not

5 been able to find any -- and I don't know that --

6 MR. HONIG: I'd like to leave that on the table so

7 that an effort can be made to contact the typist, have him or

8 her check their notes and be absolutely certain that, that no

9 copy, that --

10 JUDGE STEINBERG: Try to find it if you can and if,

11 and if you can't, make a statement that you can't. Okay.

12 9:30 tomorrow morning?

13 MR. ZAUNER: Fine.

14 MR. HONIG: Who's on? The witnesses tomorrow, Your

15 Honor, are, are whom?

16 JUDGE STEINBERG: Reverend Clancy and Mr. Stortz.

17 How much will you have for Reverend Clancy?

18 MR. HONIG: No more than, no more than half an hour,

19 Your Honor.

20 MS. LADEN: We didn't call --

21 MR. ZAUNER: We, we didn't call him and we expect --

22 JUDGE STEINBERG: Okay, so you do mop up, if

23 necessary.

24 MR. ZAUNER: If necessary.

25 JUDGE STEINBERG: Okay.

1 MR. HONIG: Will -- Stortz be available in the
2 morning so we can start around --

3 JUDGE STEINBERG: Let's, let's make Mr. Stortz
4 available when Reverend Clancy's excused, if we could. Okay?
5 So 9:30 or do you want to start earlier? Let's 9:30.

6 MR. HONIG: 9:30.

7 MS. SCHMELTZER: Yes, 9:30 is --

8 JUDGE STEINBERG: Yes, that's a nice civilized time.

9 MS. SCHMELTZER: Yes.

10 JUDGE STEINBERG: We'll be in recess until 9:30
11 tomorrow morning, thank you very much.

12 MR. HONIG: Just a quick question. When do you want
13 us to be prepared to go through the other NAACP exhibits?

14 JUDGE STEINBERG: I don't know. Friday. If we
15 don't, we're going to have two witnesses tomorrow, two
16 witnesses Friday, I mean two witnesses Thursday. If we have
17 time Thursday, if not then Friday, Friday morning and the
18 alternative to that is not Friday, sometime in the future.

19 MR. HONIG: It'll give us something to do in
20 St. Louis.

21 JUDGE STEINBERG: No, we're not going to do this in
22 St. Louis, I'm not going to, I'm not going to eat up out of
23 town time doing this.

24 MR. HONIG: I'm kidding.

25 JUDGE STEINBERG: Oh, okay. I thought I was the

1 only one that could tell jokes in here. Okay. Now we can go
2 off the record.

3 (Whereupon a brief recess was taken.)

4 JUDGE STEINBERG: Yes, we're back on the record.
5 We're back on the record. There was something that I forgot
6 to say. When we go to St. Louis, everybody bring, bring your
7 exhibits, bring whatever you're going to use in St. Louis,
8 bring with you, because the reporter won't have any exhibits
9 in St. Louis. They, they take the exhibits home with them and
10 don't bring them back, am I right? Even the ones that are
11 identified so far, received, okay.

12 REPORTER: -- have been marked and --

13 JUDGE STEINBERG: Okay, yes. Yes, once, once
14 exhibits are received or rejected, they take them with them
15 and they don't bring them back, and I, and I don't think the
16 reporter is going to have any exhibits in St. Louis, so we're
17 going to have to bring our own, our own exhibits to St. Louis,
18 our own copies and copies for the witnesses. So I just wanted
19 to put that on the record before I forgot. Now we can be in
20 recess.

21 (Whereupon at 3:25 p.m. on Tuesday, June 21, 1994,
22 the hearing recessed, to reconvene at 9:30 a.m. on Wednesday,
23 June 22, 1994.)
24
25

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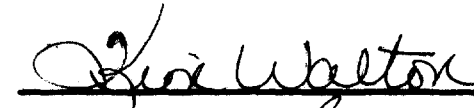
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Date

We, the undersigned, do hereby certify that the foregoing pages, numbers 253 through 418, inclusive, are the true, accurate and complete transcript prepared from the reporting by Barbara J. Lord in attendance at the above identified proceeding, in accordance with applicable provisions of the current Federal Communications Commission's professional verbatim reporting and transcription Statement of Work and have verified the accuracy of the transcript by (1) comparing the typewritten transcript against the reporting or recording accomplished at the proceeding and (2) comparing the final proofed typewritten transcript against the reporting or recording accomplished at the proceeding.

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Date



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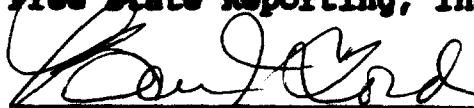
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